IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No. 15371 of 2004

Date of Decision : 29.8.2006.

Badal Singh ....Petitioner

Versus

State of Punjab and others. ..Respondents

CORAM : HON'BLE MR. JUSTICE J.S.KHEHAR
HON'BLE MR. JUSTICE S.D. ANAND

Present : Mr. H.S. Bhalla, Advocate,
for the petitioner.

Mr. Ashok Aggarwal, Addl. Advocate General, Punjab,
for the respondents.

J.S.Khehar, J. (Oral)

The petitioner was allegedly inducted into the service of the respondents as a Driver on 19.4.1975. On the basis of his aforesaid date of appointment, he claims to have been completed 24 years of service on 19.4.1999. On account of completing 24 years of service, he claims proficiency step up on account of the fact that he was not the beneficiary of a single promotion ever since his induction into service. The instant claim by the petitioner was declined by an order dated 30.11.2000. The relevant part of the aforesaid order is being extracted hereunder :-

> "Whatever benefits are to be given under the above instructions dated 15.9.98 of the Punjab Government, same are to be given if the beneficiary employee has qualification provided under rules for promotion to next post. Under the rules of operational staff of class-3 of 1977, promotional post of driver is Yard Master and matriculation is provided as educational qualification for

promotion as Yard Master. So benefit under the above instructions of government given in the subject can be granted only to those drivers who have educational qualification of matriculation.

The condition of matriculation for promotion as Yard Master from the post of Driver has been waived from the Punjab Roadways (Operational) State Services, Class-3 Rules 1977 vide government notification dated 7.6.2000. Now this benefit under the above scheme is also to be given to drivers having qualification of less than matriculation. But as per guidance given by Head Office this benefit to drivers having qualification less than matriculation is to be given from the date of amendment means from 7.6.2000. So in future the cases for giving benefits to drivers under above scheme be sent this office after preparing under these instructions/amendment along with your recommendations and cases of those drivers be also sent this office for review whose qualification is not matriculation and benefit under A.C.P. Scheme has been given before 7.6.2000."

The aforesaid order is subject matter of challenge at the hands of the petitioner.

The first question to be adjudicated upon is whether proficiency step up can be declined on account of the fact that an employee does not satisfy the terms and conditions including qualification prescribed for promotion to a higher scale. Insofar as the instant issue is concerned, learned counsel for the parties have invited our attention to the policy

instructions dated 25.9.1998 dealing with the placement in higher scale and proficiency step up. Learned counsel for the respondents has further brought to our notice paragraph 4 of the aforesaid policy instructions, which is being extracted hereunder:-

> "4. Placement in higher scale and proficiency steps-up under this policy shall be granted only to those employees whose overall service record is adjudged as `good' if a departmental test is prescribed or requisition of higher qualification is a requisites for promotion to the higher level than on those employees who clear such test or acquire such qualifications would be eligible for benefits under this scheme."

It is not a matter of dispute at the hands of the petitioner that the post of Yard Master is a promotional avenue available to drivers in the service of the respondents. It is also not a matter of dispute that under the rules applicable to drivers, like the petitioner, qualification of Matriculation was prescribed for onwards promotion to the post of Yard Master. It is conceded by the learned counsel for the petitioner that the petitioner was not a matriculate and as such, did not fulfil the qualification stipulated for promotion from the post of Driver to the post of Yard Master. In view of the above, it is prima facie apparent that the petitioner did not fulfil the condition stipulated in paragraph 4 of the policy instruction dated 25.9.1998.

In fact, learned counsel for the petitioner relied on the latter part of the impugned order dated 30.11.2000 to demonstrate that the respondents could not have insisted that the petitioner should be a matriculate while considering his claim for grant of proficiency step up. This assertion is being made on the basis of notification dated 7.6.2000 (referred to in the impugned

order dated 30.11.2000), which clearly stipulates that the qualification of matriculation prescribed for drivers as a pre condition for promotion to the post of Yard Master was relaxed and done away with by the aforesaid notification dated 7.6.2000. Although, the submission of the learned counsel for the petitioner seems to be an attractive one in the first blush but in our view, petitioner cannot claim any benefit on the basis of the notification dated 7.6.2000, on account of the fact that the petitioner sought voluntary retirement with effect from 30.9.1999 i.e. well before the respondents relaxed the qualification of matriculation (vide notification dated 7.6.2000). In view of the above, it is apparent that the petitioner cannot claim any benefit under the notification dated 7.6.2000, the same having been issued well after the service of the petitioner had come to an end with the respondents.

For the reasons recorded, we find no merit in this petition and the same is, accordingly, dismissed.

(J.S. Khehar)
Judge

August 29, 2006 (S.D. Anand)
vkd Judge